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SENATE BILL 45

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO WORKERS' COMPENSATION; PROVIDING FOR AN INDEPENDENT
MEDICAL EXAM.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 52-1-51 NMSA 1978 (being Laws 1929,
Chapter 113, Section 19, as amended) is amended to read:

"52-1-51. PHYSICAL EXAMINATIONS OF WORKER--INDEPENDENT
MEDICAL EXAMINATION--UNSANITARY OR INJURIOUS PRACTICES BY
WORKER--TESTIMONY OF HEALTH CARE PROVIDERS.--

A. ~~[In the event of a dispute concerning any
medical issue, if the parties cannot agree upon the use of a
specific independent medical examiner, either] If a party to a
claim disputes the reasonableness or necessity of medical or
surgical treatment, or the cause of an injury, that party may
petition a workers' compensation judge for permission to have~~

underscoring material = new
[bracketed material] = delete

1 the worker undergo an independent medical examination. If a
2 workers' compensation judge believes that an independent
3 medical examination will assist the judge with the proper
4 determination of any issue in the case, including the cause of
5 the injury, the workers' compensation judge may order an
6 independent medical examination upon the judge's own motion.

7 The independent medical examination shall be performed
8 immediately, pursuant to procedures adopted by the director, by
9 a health care provider other than the designated health care
10 provider, unless the employer and the worker otherwise agree.

11 B. In deciding who may conduct the independent
12 medical examination, the workers' compensation judge shall not
13 designate the health care provider initially chosen by the
14 petitioner. The workers' compensation judge shall designate a
15 health care provider on the approved list of persons authorized
16 by the committee appointed by the advisory council on workers'
17 compensation to create that list. The decision of the workers'
18 compensation judge shall be final. The employer shall pay for
19 any independent medical examination.

20 C. Only a health care provider who has treated the
21 worker pursuant to Section 52-1-49 NMSA 1978 or the health care
22 provider providing the independent medical examination pursuant
23 to this section may offer testimony at any workers'
24 compensation hearing concerning the particular injury in
25 question.

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underscored material = new
[bracketed material] = delete

1 D. If, pursuant to Subsection C of Section 52-1-49
2 NMSA 1978, the injured worker selects a new health care
3 provider, the employer shall be entitled to periodic
4 examinations of the worker by the health care provider he
5 previously selected. Examinations may not be required more
6 frequently than at six-month intervals; except that upon
7 application to the workers' compensation judge having
8 jurisdiction of the claim and after [~~reasonable~~] reasonable
9 cause therefor, examinations within six-month intervals may be
10 ordered. In considering such applications, the workers'
11 compensation judge [~~should~~] shall exercise care to prevent
12 harassment of the claimant.

13 E. If the employer requests an independent medical
14 examination or an examination pursuant to Subsection D of this
15 section, the worker shall travel to the place at which the
16 examination shall be conducted. Within thirty days after the
17 examination, the worker shall be compensated by the party
18 requesting the examination for all necessary and reasonable
19 expenses incidental to submitting to the examination, including
20 the cost of travel, meals, lodging, loss of pay or other like
21 direct expense, but the amount to be compensated for meals and
22 lodging shall not exceed that allowed for nonsalaried public
23 officers under the Per Diem and Mileage Act.

24 F. No attorney shall be present at any examination
25 authorized under this section.

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